IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2363 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? :

MANISH @ KATAR VISHNUPRASAD NAIK
Versus
STATE OF GUJARAT

Appearance:
MR HM PRACHCHHAK for Petitioner No. 1
MS HANSA PUNANI AGP for Respondent No. 1-3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 15/04/2002

ORAL JUDGEMENT

By way of this Special Civil Application under Article 226 of the Constitution of India, the petitioner has challenged the order of detention dated 13/7/2001 passed by the Police Commissioner, Ahmedabad City.

2. It is a settled principle of law that in order to

bring a person within the expression "dangerous person" as defined in clause (c) of section 2 of the Gujarat Prevention of Anti-Social Activities Act, 1985 (for short `the Act of 1985'), there should be positive materials to indicate that such person is habitual of committing or attempting to commit or abetting the commission of offences which are punishable under Chapter XVI or XVII of Chapter V of the Arms Act and that single or isolated act falling under the said Chapters cannot be characterised as a habitual acts as envisaged in section 2(c) of the PASA Act. Further, besides a person being a dangerous person, his activities should also fall within the ambit of expression `public order'. A distinction has to be drawn between the `law and order' and `maintenance of public order'. A reference may be made of M.J.Shaikh V. M.M. Mehta, Commissioner of Police & Ors., reported in 1995 (2) GLR 1268.

3. I have heard learned advocate for the petitioner and also perused the material on record. According to learned advocate for the petitioner, the detaining authority has passed the detention order relying upon the three offences registered against the detenu under Indian Penal Code and Bombay Police Act. The learned advocate for the petitioner has mainly argued regarding Sec.3(3) of the PASA Act. He has further argued that the detaining authority has passed the impugned detention order on 13/7/2001 which is required to be approved by the State Government within a stipulated period of 12 days. He has further argued that in the present case the State Government has approved the impugned detention order on 26/7/2001 i.e. after a period of 12 days. He has further argued that as the State Government has not approved the impugned detention order within a period of 12 days, the impugned order is illegal and is required to be quashed and set aside. In support of his arguments, learned counsel for the petitioner has relied upon the decision of this court rendered in the case of MANUSING B. THAKORE VS. COMMISSIONER OF POLICE, AHMEDABAD & ORS., reported in 1988(1) G.L.R. 648, in which in para 4, this court has held as under :-

> 4. On plain reading of Sec.3(3) of the said Act, it is clear that the detaining authority is required to report forthwith the fact of passing the detention order to the State Government, together with the grounds of detention and other materials which have bearing on the impugned order of detention. It is also clear that wherever the Legislature is using the word

"forthwith", it is so advisedly using it and on perusal of the entire scheme, it is very clear that there is a very tight schedule of time. Immediately on getting the report together with the grounds and other materials, the State government has to consider the same for the purpose of approval and if the approval is not given within the period of 12th days, the said order does not remain in force after 12 days and, therefore, the Legislature has advisedly used the word "forthwith" meaning of which is now settled by the judgement of the Supreme Court. It means it is to be done with all reasonable despatch and without avoidable delay. See AIR 1957 SC page 28, the case of Keshav Nilkanth Joglekar V. commissioner of Police. In the said case, the Supreme court has also in clear terms stated that they do not wish to under-score the need of the Strict compliance with that requirement and it is important requirement intended to secure that the State Government shall have sufficient time for consideration before it decides to give approval within 12 days of the order of detention. The Court would, therefore, insist on the strict compliance with it and not condone avoidable delay."

4. Without examining the legality of the grounds of detention, this petition is required to be disposed of on the short ground that the detaining authority has not submitted report to the State Government as contemplated under Sec.3(3) of the PASA Act. It was the duty of the detaining authority to make a report to the State Government about the fact of passing the detention order together with the grounds on which the order has been made. But, in the instant case, admittedly the detaining authority has passed the impugned detention order on 13/7/2001 and the State Government has approved the impugned detention order on 26/7/2001 i.e. the State Government has not approved the impugned detention order within stipulated period of 12 days. Neither detaining authority nor the State Government has filed any affidavit in this regard. Therefore, in view of the aforesaid decision relied upon the learned counsel for the petitioner, the continued detention of the detenu is required to be held as bad and illegal.

5. The petition is allowed. The impugned order of detention dated 13/7/2001 passed against the detenu is hereby quashed and set aside. The detenu namely Manish

alias Katar Vishnuprasad Naik is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no order as to costs. D.S. Permitted.

(R.P.DHOLAKIA,J.)

Rafik